

107TH CONGRESS
1ST SESSION

H. R. 1832

To improve the Federal licensing process for hydroelectric projects.

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2001

Mr. TOWNS (for himself, Mr. SHADEGG, Mr. WYNN, Mr. GRAHAM, Mr. HALL of Texas, Mr. DEMINT, Mr. CLYBURN, Mr. HASTINGS of Washington, Mr. SPRATT, Mr. NETHERCUTT, Ms. DUNN of Washington, Mr. RADANOVICH, Mr. BURR of North Carolina, and Mr. BROWN of South Carolina) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To improve the Federal licensing process for hydroelectric projects.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Hydroelectric Licens-
5 ing and Incentives Act of 2001”.

1 **SEC. 2. IMPROVEMENTS TO HYDROPOWER RELICENSING**
 2 **PROCESS.**

3 (a) IN GENERAL.—Part I of the Federal Power Act
 4 (16 U.S.C. 791a and following) is amended by adding at
 5 the end the following:

6 **“SEC. 32. PROCESS FOR CONSIDERATION BY FEDERAL**
 7 **AGENCIES OF CONDITIONS TO LICENSES.**

8 “(a) DEFINITIONS.—In this section:

9 “(1) CONDITION.—The term ‘condition’
 10 means—

11 “(A) a condition to a license for a project
 12 on a Federal reservation determined by a con-
 13 sulting agency for the purpose of the first pro-
 14 viso of section 4(e); or

15 “(B) a prescription relating to the con-
 16 struction, maintenance, or operation of a
 17 fishway determined by a consulting agency for
 18 the purpose of the first sentence of section 18.

19 “(2) CONSULTING AGENCY.—The term ‘con-
 20 sulting agency’ means—

21 “(A) in relation to a condition described in
 22 paragraph (1)(A), the Federal agency with re-
 23 sponsibility for supervising the reservation; and

24 “(B) in relation to a condition described in
 25 paragraph (1)(B), the Secretary of the Interior
 26 or the Secretary of Commerce, as appropriate.

1 “(b) FACTORS TO BE CONSIDERED.—In determining
2 a condition, a consulting agency shall—

3 “(1) consider the economic effects (including
4 power cost impacts) of the condition;

5 “(2) consider the effect on other beneficial pub-
6 lic uses (including irrigation, flood control, water
7 supply, and recreation) of the condition;

8 “(3) consider compatibility with other condi-
9 tions to be included in the license, including manda-
10 tory conditions of other agencies, when available;

11 “(4) consider compatibility with conditions ex-
12 isting at the project site, including, where applicable,
13 joint operation of a facility by two or more sovereign
14 nations, operation of a facility on a waterway that
15 is an international boundary, and conditions man-
16 dated by international treaty;

17 “(5) prescribe a condition only when necessary
18 to address direct project-related effects; and

19 “(6) in selecting among conditions that are
20 equally effective for purposes of the first proviso of
21 section 4(e) and the first sentence of section 18, pre-
22 scribe the least costly alternative.

23 “(c) DOCUMENTATION.—

24 “(1) IN GENERAL.—A consulting agency shall
25 assemble a record detailing, among other pertinent

1 matters, all proposals made, comments received from
2 public notice of draft conditions, facts considered,
3 and analyses made sufficient to demonstrate compli-
4 ance with subsection (b).

5 “(2) SUBMISSION TO THE COMMISSION.—A
6 consulting agency shall include the documentation
7 under paragraph (1) in it, submission of a condition
8 to the Commission.

9 “(d) PUBLIC COMMENT.—Before submitting to the
10 Commission a condition, and at least 90 days before a li-
11 cense applicant is required to file a license application with
12 the Commission, a consulting agency shall provide notice
13 of draft conditions and an opportunity for a hearing on
14 the record. The consulting agency shall take into consider-
15 ation all comments received and include in the documenta-
16 tion submitted to the Commission evidence thereof.

17 “(e) SUBMISSION OF FINAL CONDITION.—

18 “(1) IN GENERAL.—After an applicant files
19 with the Commission an application for a license, the
20 Commission shall set a date by which a consulting
21 agency shall submit to the Commission a final condi-
22 tion.

23 “(2) LIMITATION.—Except as provided in para-
24 graph (4), the date for submission of a final condi-
25 tion shall be not later than one year after the date

1 on which the Commission gives the consulting agen-
2 cy notice that a license application is ready for envi-
3 ronmental review.

4 “(3) DEFAULT.—If a consulting agency does
5 not submit a final condition to a license by the date
6 set under paragraph (1)—

7 “(A) the consulting agency shall not there-
8 after have authority to recommend or establish
9 a condition to the license; and

10 “(B) the Commission may, but shall not be
11 required to, recommend or establish an appro-
12 priate condition to the license that—

13 “(i) furthers the interest sought to be
14 protected by the provision of law that au-
15 thorizes the consulting agency to propose
16 or establish a condition to the license; and

17 “(ii) conforms to the requirements of
18 this Act.

19 “(4) EXTENSION.—The Commission may ex-
20 tend for good cause a deadline set under paragraph
21 (2).”.

22 (b) CONFORMING AND TECHNICAL AMENDMENTS.—
23 (1) Section 3(17)(E)(ii) of the Federal Power Act (16
24 U.S.C. 796(17)(E)(ii)) is amended by striking the period
25 at the end thereof and inserting a semicolon.

1 (2) The first proviso of the first sentence of section
 2 4(e) of such Act (16 U.S.C. 797(e)) is amended by insert-
 3 ing after “conditions” the following: “, determined in ac-
 4 cordance with section 32,” and by striking the period at
 5 the end of the proviso and inserting a colon.

6 (3) Section 14(b) of such Act (16 U.S.C. 807(b)) is
 7 amended by striking “its” and inserting “it” in the second
 8 sentence.

9 (4) Section 18 of such Act (16 U.S.C. 811) is amend-
 10 ed in the first sentence by striking “prescribed by the Sec-
 11 retary of Commerce” and inserting “prescribed, in accord-
 12 ance with section 32, by the Secretary of the Interior or
 13 the Secretary of Commerce, as appropriate”.

14 (5) Section 21 of such Act (16 U.S.C. 814) is amend-
 15 ed by inserting a colon after “\$3,000”.

16 (6) Section 30(c)(1) of such Act (16 U.S.C.
 17 823a(c)(1)) is amended by inserting a comma after “Serv-
 18 ice” each place it appears.

19 **SEC. 3. HYDROELECTRIC PRODUCTION INCENTIVES.**

20 (a) INCENTIVE PAYMENTS.—For electric energy gen-
 21 erated and sold by a qualified hydroelectric facility during
 22 the incentive period, the Secretary of Energy (referred to
 23 in this section as the “Secretary”) shall make, subject to
 24 the availability of appropriations, incentive payments to
 25 the owner or operator of such facility. The amount of such

1 payment made to any such owner or operator shall be as
2 determined under subsection (e) of this section. Payments
3 under this section may only be made upon receipt by the
4 Secretary of an incentive payment application which estab-
5 lishes that the applicant is eligible to receive such payment
6 and which satisfies such other requirements as the Sec-
7 retary deems necessary. Such application shall be in such
8 form, and shall be submitted at such time, as the Sec-
9 retary shall establish.

10 (b) DEFINITIONS.—For purposes of this section:

11 (1) QUALIFIED HYDROELECTRIC FACILITY.—

12 The term “qualified hydroelectric facility” means a
13 turbine or other generating device owned or solely
14 operated by a non-Federal entity which generates
15 hydroelectric energy for sale and which is added to
16 an existing dam or conduit.

17 (2) EXISTING DAM OR CONDUIT.—The term

18 “existing dam or conduit” means any dam or con-
19 duit the construction of which was completed before
20 the date of the enactment of this section and which
21 does not require any construction or enlargement of
22 impoundment or diversion structures (other than re-
23 pair or reconstruction) in connection with the instal-
24 lation of a turbine or other generating device.

1 (3) CONDUIT.—The term “conduit” has the
2 same meaning as when used in section 30(a)(2) of
3 the Federal Power Act.

4 The terms defined in this subsection shall apply without
5 regard to the hydroelectric kilowatt capacity of the facility
6 concerned, without regard to whether the facility uses a
7 dam owned by a governmental or nongovernmental entity,
8 and without regard to whether the facility begins oper-
9 ation on or after the date of the enactment of this section.

10 (c) ELIGIBILITY WINDOW.—Payments may be made
11 under this section only for electric energy generated from
12 a qualified hydroelectric facility which begins operation
13 during the period of 10 fiscal years beginning with the
14 first full fiscal year occurring after the date of enactment
15 of this Act.

16 (d) INCENTIVE PERIOD.—A qualified hydroelectric
17 facility may receive payments under this section for a pe-
18 riod of 10 fiscal years (referred to in this section as the
19 “incentive period”). Such period shall begin with the fiscal
20 year in which electric energy generated from the facility
21 is first eligible for such payments.

22 (e) AMOUNT OF PAYMENT.—

23 (1) IN GENERAL.—Payments made by the Sec-
24 retary under this section to the owner or operator of
25 a qualified hydroelectric facility shall be based on

1 the number of kilowatt hours of hydroelectric energy
2 generated by the facility during the incentive period.
3 For any such facility, the amount of such payment
4 shall be 1.5 cents per kilowatt hour (adjusted as
5 provided in paragraph (2)), subject to the avail-
6 ability of appropriations under subsection (g), except
7 that no facility may receive more than \$1,000,000
8 in one calendar year.

9 (2) ADJUSTMENTS.—The amount of the pay-
10 ment made to any person under this section as pro-
11 vided in paragraph (1) shall be adjusted for inflation
12 for each fiscal year beginning after calendar year
13 2001 in the same manner as provided in the provi-
14 sions of section 29(d)(2)(B) of the Internal Revenue
15 Code of 1986, except that in applying such provi-
16 sions the calendar year 2001 shall be substituted for
17 calendar year 1979.

18 (f) SUNSET.—No payment may be made under this
19 section to any qualified hydroelectric facility after the ex-
20 piration of the period of 20 fiscal years beginning with
21 the first full fiscal year occurring after the date of enact-
22 ment of this Act, and no payment may be made under
23 this section to any such facility after a payment has been
24 made with respect to such facility for a period of 10 fiscal
25 years.

1 (g) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to the Secretary to carry
3 out the purposes of this section \$50,000,000 for each of
4 the fiscal years 2002 through 2011.

5 **SEC. 4. HYDROELECTRIC EFFICIENCY IMPROVEMENT.**

6 (a) INCENTIVE PAYMENTS.—The Secretary of En-
7 ergy shall make incentive payments to the owners or oper-
8 ators of hydroelectric facilities at existing dams to be used
9 to make capital improvements in the facilities that are di-
10 rectly related to improving the efficiency of such facilities
11 by at least 3 percent.

12 (b) LIMITATIONS.—Incentive payments under this
13 section shall not exceed 10 percent of the costs of the cap-
14 ital improvement concerned and not more than one pay-
15 ment may be made with respect to improvements at a sin-
16 gle facility. No payment in excess of \$1,000,000 may be
17 made with respect to improvements at a single facility.

18 (c) AUTHORIZATION.—There is authorized to be ap-
19 propriated to carry out this section not more than
20 \$50,000,000 in each fiscal year after the fiscal year 2001.

21 **SEC. 5. SMALL HYDROELECTRIC POWER PROJECTS.**

22 Section 408(a)(6) of the Public Utility Regulatory
23 Policies Act of 1978 is amended by striking “April 20,
24 1977” and inserting “May 16, 2001”.

1 **SEC. 6. INCREASED HYDROELECTRIC GENERATION AT EX-**
2 **ISTING FEDERAL FACILITIES.**

3 (a) IN GENERAL.—The Secretary of Energy, in con-
4 sultation with the Secretary of the Interior and Secretary
5 of the Army, shall conduct studies of the cost-effective op-
6 portunities to increase hydropower generation at existing
7 federally-owned or operated water regulation, storage, and
8 conveyance facilities. Such studies shall be completed with-
9 in two years after the date of enactment of this Act and
10 transmitted to the Committee on Commerce of the House
11 of Representatives and the Committee on Energy and
12 Natural Resources of the Senate. An individual study shall
13 be prepared for each of the Nation's principal river basins.
14 Each such study shall identify and describe with speci-
15 ficity the following matters:

16 (1) Opportunities to improve the efficiency of
17 hydropower generation at such facilities through, but
18 not limited to, mechanical, structural, or operational
19 changes.

20 (2) Opportunities to improve the efficiency of
21 the use of water supplied or regulated by Federal
22 projects where such improvement could, in the ab-
23 sence of legal or administrative constraints, make
24 additional water supplies available for hydropower
25 generation or reduce project energy use.

1 (3) Opportunities to create additional hydro-
2 power generating capacity at existing facilities
3 through, but not limited to, the construction of addi-
4 tional generating facilities, the uprating of genera-
5 tors and turbines, and the construction of pumped
6 storage facilities.

7 (4) Preliminary assessment of the costs and the
8 economic and environmental consequences of such
9 measures.

10 (b) PREVIOUS STUDIES.—If studies of the type re-
11 quired by subsection (a) have been prepared by any agency
12 of the United States and published within the five years
13 prior to the date of enactment of this Act, the Secretary
14 of Energy may choose not to perform new studies and in-
15 corporate the information in such studies into the studies
16 required by subsection (a).

17 (c) AUTHORIZATION.—There is authorized to be ap-
18 propriated such sums as may be necessary to carry out
19 the purposes of this section.

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